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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/840,077	04/24/2001	Patrick Michael McCaffrey	ROC920010057US1-IBM 204	2562
7590	08/23/2005			EXAMINER
Robert H. Berdo, Jr. RABIN & CHAMPAGNE, P.C. Suite 500 1101 14th Street, N.W. Washington, DC 20005			OJINI, EZIAMARA ANTHONY	
			ART UNIT	PAPER NUMBER
			3723	
DATE MAILED: 08/23/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT PAPER

20050817

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

Joseph J. Hail III
SPE
Art Unit: 3723

In the non-final rejection mailed 3/11/05, form paragraph 12.81 could have been used to more clearly define applicant's options he had before him when contemplating responding to the 3/11/05 office action. Form paragraph is reproduced below:

¶ 12.81 Reopening of Prosecution - New Ground of Rejection After Appeal or Examiner's Rebuttal of Reply Brief

In view of the [1] filed on [2], PROSECUTION IS HEREBY REOPENED. [3] set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

Examiner Note

1.

Use this form paragraph to reopen prosecution in order to make a new ground of rejection of claims or to enter a rebuttal to the reply brief. The finality or non-finality of an Office action following a reopening of prosecution depends on whether the action could have been properly made final had it been entered prior to the appeal.

2.

In bracket 1, insert --appeal brief--, --supplemental appeal brief--, --reply brief-- or --supplemental reply brief--.

3.

In bracket 2, insert the date on which the brief was filed.

4.

In bracket 3, insert --A new ground of rejection is--, --New grounds of rejection are-- or --A rebuttal to the Reply Brief is--.

MPEP goes on to further state in MPEP 1208.02:

After reopening of prosecution, appellant must exercise one of the following options to avoid abandonment of the application:

- (A) file a reply under 37 CFR 1.111, if the Office action is non-final;
- (B) file a reply under 37 CFR 1.113, if the Office action is final; or
- (C) request reinstatement of the appeal.

See 37 CFR 1.193(b)(2). Whether appellant elects to continue prosecution or to request reinstatement of the appeal, if prosecution was reopened prior to a decision on the merits by the Board of Patent Appeals and Interferences, the fee paid for the notice of appeal, appeal brief, and request for oral hearing (if applicable) will be applied to a later appeal on the same application.

If reinstatement of the appeal is requested, the request must be accompanied by a supplemental appeal brief; however, no new amendments, affidavits (37 CFR 1.130, 1.131, or 1.132), or other evidence is permitted. The supplemental appeal brief must comply with the requirements of 37 CFR 1.192(c), but in doing so may incorporate by reference such parts of the previously-filed brief as may still be applicable. The arguments presented in the supplemental appeal brief need only be those relevant to the new ground(s) of rejection raised in the Office action that reopened prosecution, but the appellant should also identify all previously-raised issues and/or arguments which are still considered to be relevant. If the examiner does not consider that the supplemental appeal brief complies with the foregoing requirements, appellant should be given a 1-month time period within which to file an amended supplemental brief under 37 CFR 1.192(d). See MPEP § 1206.

Accordingly, applicant must either file a response to the outstanding office action under 37 CFR 1.111 or request reinstatement of the appeal together with a supplemental appeal brief.

The response filed on April 5, 2005 is non-responsive because it appears to be requesting reinstatement of the appeal. However, this request is not accompanied with a supplemental brief as is required, and appears to be requesting the examiner vacate the outstanding office action mailed March 11, 2005. This is not one of applicant's options he has before him. Therefore, applicant is given one month, or thirty (30) days,

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whichever is longer, from the mail date of this notice in which to file a proper response
to the outstanding office action mailed March 11, 2005.

Any inquiry concerning this communication should be directed to Joseph J. Hail
III at telephone number (571) 272-4485.



Joseph J. Hail III
SPE
Art Unit 3723